> or by consent * * *. In either event, a court does not abdicate its power to revoke or modify its mandate if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong."

The plan of reorganization has not yet become effective and the final judicial act with reference to the plan of reorganization must make that plan of reorganization respond to conditions as of the date of final decree.

Granting for the purposes of argument that the conditions affecting the Commission's estimate of earnings of the Debtor's property might have justified the Commission in certifying the plan of reorganization here under attack, it is now certain that the conditions then existing no longer exist. The estimate of the Commission of maximum income available for fixed charges in the normal year is $14,625,000 (Tr. 3518); last year's income, before income taxes, was more than $35,700,000. To permit the plan of reorganization to become effective would be to subject junior creditors and stockholders to substantial wrong.

The record should be supplemented by the facts embraced in this motion and in the prior motion, and, in the light of the record thus supplemented, there should be no difficulty (a) in finding the plan of reorganization not just and reasonable, or (b) in remanding the proceedings to the District Court with directions to the Commission

to certify a plan of reorganization reflecting conditions at the present time.

Respectfully submitted,

HELEN W. MUNSERT,
LUTHER M. WALTER,
Attorneys for Chicago and North Western Railway Company, Debtor,
Petitioner.

Dated at Chicago, Illinois, this 23rd day of February, 1943.

APPENDIX A.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

In Proceedings for the Reorganization of a Railroad.

In the Matter of
Chicago and North Western Railway Company,
Debtor. } No. 60448

STATEMENT OF ASSETS AND LIABILITIES OF DEBTOR AS OF DECEMBER 31, 1942 AND SUMMARY OF REVENUES AND EXPENSES OF DEBTOR FOR THE MONTH OF DECEMBER, 1942.

TO THE CLERK OF SAID COURT:

Pursuant to Section 7 of Order No. 1, entered herein on June 28, 1935, I submit herewith a statement of the assets and liabilities of the Debtor as of December 31, 1942, together with a statement showing revenues and expenses of the Debtor for the month of December, 1942. Said statements are certified as correct by the chief accounting officer of the Debtor.

CHARLES M. THOMSON,
Trustee of the property of Chicago and North Western Railway Company.

Dated: February 12, 1943.

Filed: February 13, 1943.